

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Reexamination of the Comparative )  
Standards for Noncommercial Educational )  
Applicants )

MM Docket No. 95-31

**COMMENTS OF  
BIG SKY BROADCASTING COMPANY**

Big Sky Broadcasting Company ("Big Sky"), by its attorneys, hereby responds to the above-captioned Further Notice of Proposed Rulemaking, released by the Federal Communications Commission ("Commission" or "FCC") on October 21, 1998.<sup>1</sup> Big Sky currently has an application pending before the Commission for a construction permit to build a commercial FM broadcast station on unreserved Channel 299A in Idalou, Texas. Since its application is mutually exclusive with those filed by various noncommercial educational ("NCE") and commercial applicants, Big Sky has a direct interest in the outcome of this rulemaking proceeding. Specifically, Big Sky is concerned with the Commission's proposals for the handling of applications by NCE entities for "unreserved" or "commercial" broadcast frequencies.

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<sup>1</sup>Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Further Notice of Proposed Rulemaking, MM Docket No. 95-31, FCC 98-269 (rel. Oct. 21, 1998) ("Further NPRM").

Past Commission practice has allowed NCE applicants to compete for unreserved broadcast frequencies under the same rules applicable to commercial applicants.<sup>2</sup> This practice corresponds with Congress' intent in enacting Section 309(j)(2)(C) of the Communications Act of 1934 (the "Act"), an exemption to the general competitive bidding procedures for "licenses or construction permits issued by the Commission" for NCE stations.<sup>3</sup> In situations where there are mutually exclusive applicants for NCE-reserved spectrum, or where the only applicants for unreserved broadcast frequencies are NCE entities, this exemption clearly applies since the resulting license or permit will necessarily be for an NCE broadcast station.

However, where there are both NCE and commercial applicants for unreserved broadcast frequencies, a similar outcome cannot be assured. Either an NCE or a commercial applicant may successfully acquire the commercial broadcast spectrum. As a result, the Commission cannot determine in advance what type of broadcast station the resulting license or construction permit will authorize, rendering Section 309(j)(2)(C) inapplicable. Any other reading of the statute would subvert its plain meaning by allowing the Section 309(j)(2)(C) exemption to override the Commission's general competitive bidding procedures every time an NCE entity applied for commercial broadcast spectrum.

To the contrary, the legislative history of the Balanced Budget Act of 1997<sup>4</sup> indicates that Congress anticipated the application of competitive bidding procedures to the award of a license or construction permit for an NCE broadcast station in some instances. When enacting Section 309(i)(5)(B) of the Act, which terminated the Commission's lottery authority for all applications

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<sup>2</sup>See Further NPRM at ¶ 34.

<sup>3</sup>47 U.S.C. § 309(j)(2)(C).

<sup>4</sup>Pub. L. No. 105-33, 11 Stat. 251 (1997).

other than those for NCE broadcast station licenses, Congress specifically stated that Section 309(i)(5)(B) did “not prevent the Commission from awarding licenses for [NCE] stations through the competitive bidding process.”<sup>5</sup> The Commission is therefore bound by Congress’ intent as expressed in the legislative history to the Balanced Budget Act of 1997 and should retain its current policy of handling NCE applications for unreserved broadcast frequencies in the same manner as mutually exclusive commercial applications.

In the event that the Commission decides to modify its current procedures in some way, those modifications should apply prospectively and not retroactively. Fairness dictates that applicants with pending, mutually exclusive applications to acquire unreserved broadcast frequencies have their applications resolved in accordance with the procedures in effect at the time their applications were filed.

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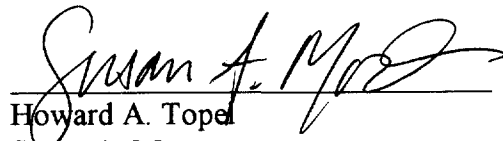
<sup>5</sup>Conference Report on H.R. 2015, Balanced Budget Act of 1997.

## **VI. Conclusion**

For all of the reasons set forth above, the Commission should maintain its current policy and treat NCE applicants seeking to acquire unreserved, commercial broadcast frequencies in the same manner as mutually exclusive commercial applicants under the competitive bidding procedures established by the Balanced Budget Act of 1997.

Respectfully submitted,

**BIG SKY BROADCASTING COMPANY**

  
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